

ENTERED

December 06, 2017

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

GISELLA GUTIERREZ,
Plaintiff,

v.

REX W. TILLERSON, et al.,
Defendants.

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Civil Action No. 1:17-cv-111

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Before this Court is Rex. W. Tillerson (Secretary of State), Nancy A. Berryhill (Acting Commissioner of U.S. Social Security Administration) and United States of America's (hereafter, collectively known as "Defendants") "Motion to Dismiss for Lack of Subject-Matter Jurisdiction and Failure to State a Claim" (Docket No. 10) and the "Magistrate Judge's Report and Recommendation" (Docket No. 22) (hereafter "R&R"). The deadline to respond to the R&R was November 29, 2017; no objections were filed. After a *do novo* review of the record, the R&R (Docket No. 22) is hereby **ADOPTED**. Accordingly:

1. Plaintiff's 8 U.S.C. § 1503(a) claim against Commissioner Berryhill for declining to issue Plaintiff a Social Security card is **DISMISSED** pursuant to Federal Rule of Civil Procedure 12(b)(6). Commissioner Berryhill is **DISMISSED** as a Defendant in this action.
2. Plaintiff's 8 U.S.C. § 1503(a) claim against the State Department for refusing to approve her parents' immigrant visas is **DISMISSED** pursuant to Federal Rule of Civil Procedure 12(b)(6).
3. Plaintiff's Administrative Procedure Act claims against the State Department for failing to consider certain facts or provide notice and an opportunity to be heard prior

to revoking her passport is **DISMISSED** pursuant to Federal Rule of Civil Procedure 12(b)(1).

4. The United States is **DISMISSED** as a Defendant in this cause of action.
5. Plaintiff's requests for injunctive relief against Secretary Tillerson and Commissioner Berryhill are **DISMISSED** pursuant to Federal Rule of Civil Procedure 12(b)(6).
6. Plaintiff's 8 U.S.C. § 1503(a) claim seeking a declaratory judgment granting citizenship on the basis of Plaintiff's passport revocation survives Defendants' "Motion to Dismiss for Lack of Subject-Matter Jurisdiction and Failure to State a Claim" (Docket No. 10).

Signed on this 6th day of December, 2017.



Rolando Olvera
United States District Judge